

## FINAL STATEMENT OF REASONS

### **1) The Update to the Initial Statement of Reasons**

There are no changes to the initial statement of reasons, which is hereby incorporated by reference, with the exception of the following:

#### **Section 225.03(g)**

This subdivision is amended to identify the current form revision for the Information Security and Disclosure Statement (Firm), EXEC 201X (Rev. 3/2003). The form was revised in response to changes in the federal "Driver's Privacy Protection Act". The form now informs business partners and employees of business partners of the consequences of disclosing, obtaining or using personal information from a motor vehicle record not permitted under the law. This amendment is necessary to comply with the department's privacy and security requirements under Sections 1685(b)(3) and 1685(f) of the Vehicle Code.

#### **Section 225.09(a) & (a)(1)**

This subdivision is amended to identify the revised bond form that includes new monetary amounts specified in this section. The conditions were deleted from the bond and added to the regulatory text to conform to the department's standard surety bond format. This amendment is necessary to identify the current version of the form required by the department.

#### **Section 225.09(b)(2)**

This subdivision is amended to increase the monetary amount for a first-line service provider bond or irrevocable letter of credit to a minimum of one million dollars (\$1,000,000). The increase in the monetary amount is necessary to compensate the department for the expected increase in second-line business partners that will interface with each first-line service provider. This increase in the amount of business partners interacting with each first-line service provider will increase the risk of each first-line service provider to meet the Business Partner Automation (BPA) program's statutory and regulatory requirements.

#### **Section 225.09(b)(3)**

This subdivision is amended to lower the monetary amount for a second-line business partner bond or irrevocable letter of credit to a minimum of fifty thousand dollars (\$50,000). The increase in the monetary amount of the first-line service providers allows for a lowering of risk assumed by second-line business partners, therefore the monetary amount of the bond or irrevocable letter of credit was reduced to fifty thousand dollars (\$50,000).

#### **Section 225.09(c)**

This subdivision is added to condition the bond and the irrevocable letter of credit. This condition exempts the State of California, any political entities or officers and all state employees from responsibility for monetary compensation for the misuse of information by business partners. This amendment is necessary to inform business partners and customers of the State of California's legal responsibility to provide monetary compensation when a business partner misuses the department's

information or information provided by customers for the processing of the department's transactions.

**Section 225.09(d)**

This subdivision is added to specify what monies the bond and irrevocable letter of credit obligate a business partner to pay to the department. This is necessary to inform the business partners of their obligations for payment with the bond and irrevocable letter of credit.

**Section 225.09(e)**

This subdivision is added to specify the three conditions that authorize the bond and irrevocable letter of credit to pay the State of California or any political entity related to the state for any loss or damage. This is necessary to inform the business partners of the circumstances when the department will require payment from the bond or irrevocable letter of credit.

**Section 225.09(e)(1), (2) & (3)**

These subdivisions are added to specify the bond and irrevocable letter of credit conditions that authorize payment. Subdivision (e)(1) specifies the first condition, which concerns information obtained from the department by false or misleading representation by business partners. Subdivision (e)(2) specifies information obtained from the department or customers and used in a manner other than allowed in the regulations or BPA contract. Subdivision (e)(3) specifies any other action taken by a business partner that causes a loss to the State will be reimbursed from the bond or irrevocable letter of credit. This is necessary to inform the business partners of the specific conditions when the bond and the irrevocable letter of credit are to be used to reimburse the State of California, its political entities, including the department, for losses that incurred.

**Section 225.36(d)**

This subdivision is amended by making a non-substantive grammatical change.

**Section 225.45(a) and (a)(1)**

Subdivisions (a) and (a)(1) are amended to clarify the type of fee which must be stated on the form. Subdivision (a) is also amended to add the exception that allows a business partner to use a conditional sales contract or a leasing agreement in lieu of the Business Partner Automation Disclaimer form, REG 4020. The exception resolves a problem identified in the public comments and avoids duplication of requirements by allowing an existing dealer form to be modified for use in place of requiring an additional form.

**Section 225.45(b) & (c)**

Subdivisions (b) and (c) are amended to lower the maximum amount a business partner may charge a customer to twenty-five dollars (\$25) per transaction. The fee amount had been calculated to include a two-dollar (\$2) transaction fee that the department was planning to charge for each transaction processed by a business partner. The department, after discussions with the Department of Finance, decided not to pursue the collection of a transaction fee, thus, the maximum was lowered by two dollars (\$2). This is necessary to inform the business partners and

customers of the legal maximum charges to process each Department of Motor Vehicle (DMV) transaction by a business partner.

**Section 225.45(d)**

Subdivision (d) was deleted and the transaction fee will be addressed separately in Section 225.48.

**Section 225.48**

Section 225.48 has been withdrawn. The department, after discussions with the Department of Finance, will not pursue the collection of a transaction fee through the regulatory process at the present time.

**Section 225.54**

This subdivision is amended to identify the current revision of the BPA Transaction Procedures and Inventory Requirements Handbook (Rev. 3/20/03). This is necessary to identify the most current version of the handbook so that the business partners follow the appropriate rules and procedures. The handbook was revised on page four (4) to clarify the requirements for acceptance of an insurance card. The name of the insured on the policy or the vehicle owner's name is now required and a note was added that if the policy expiration date is present, it must be valid for the registration period for which the fees are paid. This is the standard policy used in the department's local field offices. The handbook is now within the standards of the department's overall policy governing insurance verification acceptance.

**Section 225.63(f)**

This subdivision is added to inform business partners that the department retains authority to conduct its own compliance audits. This is necessary to minimize fraud in the auditing process and ensure compliance with the department's laws and regulations.

**2) Imposition of Mandate on Local Agencies or School Districts**

The department's regulatory action adopting Sections 225.00, 225.03, 225.06, 225.09, 225.12, 225.15, 225.18, 225.21, 225.24, 225.27, 225.30, 225.33, 225.36, 225.39, 225.42, 225.45, 225.48, 225.51, 225.54, 225.57, 225.60, 225.63, 225.66, 225.69, and 225.72 in Article 3.6, Chapter 1, Division 1, of Title 13, California Code of Regulations, does not impose any mandate on local agencies or school districts and imposes (1) no cost or savings to any state agency, (2) no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, (3) no other non-discretionary cost or savings to local agencies, and (4) no costs or savings in federal funding to the state. No studies or data were relied upon to make this determination.

**3) Summary of Comments Received and Department Response**

The proposal was noticed on December 27, 2002, and made available to the public from December 27, 2002 through February 24, 2003. An extension of the public comment period was noticed on January 13, 2003.

The department received 3 written comments during the public comment period that began December 27, 2002, and was extended until February 24, 2003. A request for a public hearing was withdrawn, therefore no public hearing was held. A 15-day Notice of Modification of the proposal was published on May 1, 2003, and ended on May 16, 2003. No public comments were received on the Notice of Modification.

Included with those comments and responses are written comments received during the development of the emergency and the permanent regulations. Several comments were repeated in letters and email. These comments, a list of those who presented them, and the department's response, are as follows:

**Section 225.03. Application Requirements.**

**225.03(b)** A business partner applicant shall pay a non-refundable application fee of three hundred and twenty-four dollars (\$324) for its principal place of business and one hundred and thirty dollars (\$130) for each site added with the application.

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**COMMENTS:**

- [William T. Rountree III, GSS, Inc and TriVIN, Inc., June 28, 2002]

The expense required to participate in the program will make it unattractive to potential Second Line Business Partners.

***Department's Response:***

*The department reviewed its fee structure for the BPA program and modified its fees to incorporate the costs to the department for processing changes into the initial application fees.*

- [W. D. Kreutzen, Transportation Corridor Agencies, February 20, 2003]

There seems to be a discrepancy in the non-refundable application fee. In Title 13, Article 3.6, Section 225.03 (b), the non-refundable application fee is listed as \$324. In the Notice of Written Comment Period, under Fiscal Impact Statement, page 5, the non-refundable application fee is listed as \$244.

***Department's Response:*** *The application fee listed in the Notice of Written Comment Period was corrected to \$324. The discrepancy was corrected with the third emergency package.*

- [Tom Fessenden, CVR, email, July 1, 2002]

In issuing the regulations, the Department of Motor Vehicles has exceeded the authority granted in Section 1685, Vehicle Code section (2)(A), (B) and (C) by including subsection 225.03, 225.06, and 225.09.

***Department's Response:*** *Vehicle Code section 1685(b)(2)(A), (B) and (C) refer to the contract between the department and private industry partners. Vehicle Code section 1685(f) states the department is required to adopt regulations –to ensure adequate oversight and monitoring of qualified private industry partners to protect vehicle owners from the improper use of vehicle records.” To complete this task, the department has established in regulation the application process to determine who is –qualified” as required in statute. The regulations also establish how business partnerships will be monitored to comply with the law and to protect consumers, and provide adequate review to ensure that security and financial responsibility requirements are not compromised.*

**225.03(d)** A business partner applicant shall submit a photocopy of the completed and signed Request for Live Scan Service form, DMV 8016 (Rev. 3/2002) in accordance with Section 225.06 of these regulations and a Statement of Personal History form, REG 4019 (Rev. 11/2002) for each owner and each employee. The Statement of Personal History form is hereby incorporated by reference. A business partner applicant shall submit the documents required by this section for all employees who participate in the BPA program in any capacity, including managing, administering; monitoring transactions, inventory, and money; ordering and

accounting of inventory; processing of vehicle registration transactions and working directly with customers; supervising and/or managing the employees involved with the BPA; or the owners, management, and administrative staff responsible for the overview of the program for the business partner.

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COMMENTS:

- [CVR-Unsigned, dated June 2002]

CVR does not understand the need to fingerprint each user, and especially their manager, when the dealership owner is already fingerprinted as a requirement of his occupational license. Additionally, in the manual process, title clerks working in the manual registration process are privy to the same sensitive information as that managed in the BPA program, however they are not subject to the fingerprinting and background checks as specified in the above subsection. This disparity in the new requirements is inconsistent and no real security is added.

**Department's Response:** *Vehicle Code section 1685(b)(2)(B) requires the department to focus on character, honesty, integrity and reputation. The department has interpreted this mandate to require all persons involved in the actual program to be free from prior known work-related crimes involving moral turpitude. The most expeditious and efficient means to acquire this information is with a fingerprint scan processed by the California Department of Justice and the Federal Bureau of Investigations.*

*The BPA program allows non-department employees to access and enter information into our databases, and to handle the license plates and stickers (indicia) that have a black market or street value, besides providing them with vehicle owner information from processed documents. –Title clerks” do not have direct access to the department’s databases and indicia. Section 225.03(e) exempts business owners who currently holds a departmental occupational license and whose fingerprints have already been submitted to the department from providing fingerprints again for the BPA program.*

- [Dan Cinnamon, GSS, July 29, 2002]

A completed and signed Request for Live Scan Service form DMV 8016 (Rev. 12/2001) should be required of only those employees who participate in the BPA program in the capacity of processing vehicle registration transaction, and/or monitoring, ordering, or accounting of DMV inventory. This will eliminate the sixty-six (\$66) cost for the Live Scan on personnel not directly assessing or viewing DMV records, or monitoring, ordering, or accounting for DMV inventory.

**Department's Response:** *The department has determined that its main responsibility is to the customers in our databases. The department must ensure that the highest standards of security are in place to protect the information on the department’s databases and the plates and stickers that represent revenue for the State and individual counties.*

**225.03 (i)** The department will review a submitted application package and determine whether or not the application package is complete within thirty (30) days of the receipt of the application package as required by Section 225.03 of these regulations. \*\*\* The department will review a complete application package and decide whether or not to enter into a BPA contract within ninety (90) days of receipt of the complete package.

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COMMENTS:

- [William T. Rountree III, GSS, Inc and TriVIN, Inc., June 28, 2002]

The unnecessarily bureaucratic application process required of potential business partners will cause most potential second-line business partners (SLBPs) to decline participation. It appears that the application approval process may take as long as 120 days, even after the submission of the completed application documents.

**Department's Response:** *The time frames are the maximum allowed, not the average.*

*Currently a completed application is sent to the department's contracts unit for processing within two (2) weeks of the receipt of the completed application. The time frames have been established to allow business partners time to meet all the requirements including obtaining a bond, submitting fingerprints and addressing the physical and electronic security issues. Business partners have indicated that acquisition of a surety bond has proven to be difficult; this time period allows for the business partner to acquire a bond. The time frames also allow the department adequate time to process any large influx of business partner applications that may be received.*

- [Dan Cinnamon, GSS, July 29, 2002]

The DMV's review should not take longer than forty-five (45) days unless an extension is requested by the SLBP applicant to allow more time to submit additional documentation. The SLBP applicant should also be provided an appeal in the event its application is rejected. Furthermore, the emergency regulations are silent on the effect on the SLBP applicant if the DMV doesn't complete its review within the prescribed period. In this event, the application fee(s) should be refunded.

**Department's Response:** *The commenter suggests that due process requirements of notice and hearing should be provided in the regulations for applicants who believe they are unfairly denied participation in the Business Partner Automation program. Due process must be satisfied when a government agency has discretion to determine the facts and the law, and deprive an individual of a constitutionally protected liberty or property interest. The statutorily authorized screening process established in these regulations satisfies the legitimate government interest of protecting the public against the risk of harm by persons who have access to the department's database, indicia and personal information.*

*An SLBP applicant whose participation is screened out through this process is not subject to a change of legal status nor deprived of an existing or future property interest or right. The applicant has no claim of entitlement. If the department does not complete its review within the prescribed time frame, the applicant has the right to appeal the alleged violation of the time periods for processing applications under the Permit Reform Act to the Business, Transportation and Housing Agency (see Title 21, Section 7601 through 7630, California Code of Regulations. Guidelines for determining whether the department should enter into a contract and issue a permit are contained in Section 225.21(a)(1) based on the criminal history information that is provided by the personal history questionnaire and the fingerprint process.*

**225.03 (d)(1)(B)** The completed original fingerprint forms, along with a copy of the receipt from the local law enforcement agency for processing the form, a photocopy of each person's driver license or identification card issued by the state where the site is located, a completed and signed Personal History Statement form for each person, and forty-two dollars (\$42) for the Department of Justice (DOJ) and twenty-four dollars (\$24) for the Federal Bureau of Investigations (FBI) fingerprint checks for a total of sixty-six dollars (\$66) for each set of fingerprints shall be sent by trackable mail. Checks shall be made payable to the Department of Motor Vehicles.

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COMMENTS:

- [William T. Rountree III, GSS, Inc and TriVIN, Inc., June 28, 2002]

The expense required to participate in the program will make it unattractive to potential Second Line Business Partners.

**Department's Response:** *The required fees for the Live Scan process (DOJ and FBI fingerprint processing) are not set by the department and cannot be waived by the department. The cost includes future monitoring should additional information become available that may affect the individual's eligibility to participate in the BPA program.*

- [Tom Fessenden, CVR, email, July 1, 2002]

In issuing the regulations, the Department of Motor Vehicles has exceeded the authority granted in Section 1685, Vehicle Code section (2)(A)(B)(C ) by including subsection 225.03, 225.06, and 225.09.

**Department's Response:** See response to comments on Section 225.03 (page 1).

- [Rick Carino, Frank Motors, email, February 21, 2003]

Section 225.39 (a)(4) states that the business partner must fingerprint each involved employee...For many dealers the cost associated with fingerprinting would be burdensome.

**Department's Response:** The required fees for the Live Scan process (DOJ and FBI fingerprinting process) are not set by the department and cannot be waived by the department. The cost includes future monitoring should additional information become available that may affect the individual's eligibility to participate in the BPA program.

*The department has determined that its main responsibility is to the customers in our databases. The department must ensure that the highest standards of security are in place to protect the information on the department's databases and the license plates and stickers that represent significant revenue for the State and individual counties.*

## **Section 225.09. Financial Security Requirements.**

**225.09** (a) A business partner shall procure and file an acceptable method of financial security as indicated in this section with the department for the term of its BPA contract plus three (3) months. The acceptable methods of financial security are:

(1) A bond executed by a California admitted surety insurer on a Business Partner Automation Surety Bond form, REG 866 (Rev. 12/2002) and as conditioned in Sections 225.09(b)(1) or (2) of these regulations.

(A) The Business Partner Automation Surety Bond form is hereby incorporated by reference.

(2) An irrevocable letter of credit issued from a bank doing business in the State of California, and insured by the Federal Deposit Insurance Corporation. The State of California, Department of Motor Vehicles, shall be identified as the beneficiary. The letter of credit shall provide for honor of a draft or demand for payment presented with the State's written statement certifying that there has been a loss, damage or liability resulting from a Business Partner's performance or nonperformance, and that the amount of the demand or draft is therefore now due and payable. The letter of credit shall be automatically renewable for the length of the contract and shall remain in effect until the contract expires plus three (3) months.

(b) The amounts of financial security required shall be as follows:

(1) A first-line business partner shall maintain a bond or an irrevocable letter of credit in the amount of six hundred and fifty thousand dollars (\$650,000).

(2) A first-line service provider shall maintain a bond or an irrevocable letter of credit in the amount of one million dollars (\$1,000,000).

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### **COMMENTS:**

- [CVR-Unsigned, dated June 2002]

Under the existing program, there is a \$50,000 bond requirement for automobile dealer-sized SLBP's (second-line business partner), and this appears to have been sufficient to inhibit security violations. Doubling the bond costs to the SLBP, as indicated in the above subsection [*emergency regulations*], will strongly dissuade a SLBP's participation in the BPA program. [*CVR referred to the emergency regulations approved July 5, 2002.*]

**Department's Response:** The department has reviewed the bond requirements and has reduced the amount required for a second-line business partner. The dealer bond is not acceptable for the BPA bond because the dealer bond is conditioned under Vehicle Code section 11710 which obligates the surety company to pay for losses occurring when the dealer practiced fraud or made

*a fraudulent representation which caused a monetary loss to a purchaser, seller, financing agency, or governmental agency; Vehicle Code section 11711(b) and (c), which obligates the surety company to pay losses resulting from a licensed dealer's failure to pay fees due the department and loss or damage by reason of any fraud made to the state by a licensed dealer; and Vehicle Code section 11722, which obligates the surety company to pay losses when a financing agency is defrauded by the dealer. These conditions are very different from those stated in Section 225.09 of these regulations.*

- [William T. Rountree III, GSS, Inc and TriVIN, Inc., June 28, 2002]

The expense required to participate in the program will make it unattractive to potential Second Line Business Partners.

The proposed regulations significantly increase the bonding requirements for both first-line service providers (FLSPs) and SLBPs. Surety bond premiums have risen drastically as the U.S. reinsurance market collapsed as a result of the terrorist attacks on September 11<sup>th</sup> and the collapse of Enron last year. Many SLBPs may not qualify in this new insurance environment for the increased bond amounts at any cost.

**Department's Response:** *The department must protect taxpayers from harm brought about because of misconduct or mistakes made by a business partner. Therefore, business partners must assume the risk and the department must verify that the business partners have or will assume at least part, if not all, possible risk by providing a surety bond at a reasonable monetary level.*

- [Tom Fessenden, CVR, email, July 1, 2002]

In issuing the regulations, the Department of Motor Vehicles has exceeded the authority granted in Section 1685, Vehicle Code section (2)(A)(B)(C) by including subsection 225.03, 225.06, and 225.09.

**Department's Response:** *Vehicle Code section 1685(b)(2)(A)(B) and (C) refer to the contract between the department and private industry partners. Vehicle Code section 1685(f) states the department is required to adopt regulations –to ensure adequate oversight and monitoring of qualified private industry partners to protect vehicle owners from the improper use of vehicle records.” To complete this task, the department had determined that business partners must assume responsibility to the vehicle owners by providing a method of financial security to monetary cover losses to vehicle owners and the department.*

- [Dan Cinnamon, GSS, July 29, 2002]

Prior to the emergency regulations, a one-year renewable bond was acceptable to the DMV. These bonds require the surety to notify the DMV in writing when the bond is about to expire. It is an unnecessary burden on cash flow to require a pre-paid bond for the three-year life of the contract plus three months. The existing bond requirements for SLBP's are appropriately incremental based on transaction volume, and reflect the State's exposure by transaction type. If the State makes additional transaction types available, then the appropriate bonding requirements should follow. With the historical approach a SLBP is not unduly assessed for transactions they are not processing.

GSS concurs that there is a need for standalone bonds for this project, and that the bond required for Occupational Licensees is not deep enough to protect the State. We propose the continued graduated schedule for bond amounts.

**Department's Response:** *The department has determined that the risk involved requires the increased length of time the business partner must carry the bond. The department must meet the needs of the state taxpayers and the customers contained in our databases, as well as the business partners.*

- [Dan Cinnamon, GSS, August 28, 2002 and October 29, 2002]

GSS respectfully requests that a 1-year renewable bond continue to satisfy the Public/Private surety bond requirement for participating Second Line Business Partners (SLBP). Requiring that the Public/Private surety bond be procured for the 3-year life of the contract plus three months in advance is unattainable for most SLBPs. Since the September 2001 tragedy, bond premium have soared and the requirements needed to qualify for bonds have also become much more strenuous. A surety bond company would need to assess the additional risk of the procurement of a multiple year policy. This would lead to even higher premiums and minimum qualifications needed. Several surety bond companies have stated that multiple year policies would not be made available at any qualification level for the public/private surety bond. In addition, it is an unnecessary burden on cash flow to require a pre-paid bond for the three-year life of the contract plus three months. And often the SLBPs operate on a narrow budget and cannot afford such initial operating costs associated with the procurement of a multiple year surety bond. GSS recognizes the state's need to protect itself from liability, but continuing 1-year renewable public/private surety bonds would protect the State's interests without discouraging or inadvertently denying potential SLBPs.

**Department's Response:** See response above.

**225.09 (b)** The amount of financial security required shall be as follows:

(1) A first-line business partner shall maintain a bond or an irrevocable letter of credit in the amount of six hundred and fifty thousand dollars (\$650,000).

(2) A first-line service provider shall maintain a bond or an irrevocable letter of credit in the amount of one million dollars (\$1,000,000).

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COMMENTS:

- [Dan Cinnamon, GSS, February 24, 2003]

Requiring a bond or an irrevocable letter of credit in the amount of one million dollars (\$1,000,000) is an additional fiscal burden that will limit Service Provider involvement in the Business Partner Automation program. A bond or irrevocable letter of credit of six hundred and fifty thousand dollars (\$650,000) is adequate to satisfy the DMV concerns and meets the current requirements to be a first line service provider.

**Department's Response:** The department has determined that each first-line service provider can potentially interface the department with thousands of second-line business partners. The level of risk associated with a vast group of second-line business partners compels the department to require a \$1,000,000 surety bond.

## **Section 225.12. Business Partner Contract.**

**225.12 (b)** A BPA contract shall be in effect for 36 months and is not renewable. A new application and BPA contract shall be required for each permit term. The application process may be started after the second audit report, including any findings and recommendations, is submitted to the department pursuant to Section 225.63 of the regulations.

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COMMENTS:

- [CVR-Unsigned, dated June 2002]

The existing BPA agreement states "the Agreement may be renewed at the end of the term (after 36 month term) with the written consent of both parties." This arrangement has been successful since the inception of the program in 1996, and should not be changed.

**Department's Response:** A renewal process will be implemented in the future but at this time the process is not ready to be implemented.

- [Dan Cinnamon, GSS, October 29, 2002]

This regulation stipulates that a Business Partnership Automation (BPA) contract is in effect for thirty-six (36) months and is not renewable. GSS requests the removal of the following text "and is not renewable" from this subsection to allow the Business Partners the future possibility of renewing their contracts.

**Department's Response:** A renewal process will be implemented in the future but at this time the process is not ready to be implemented.

### **Section 225.18. Cause for Refusal to Enter into a Contract and Issue a Permit.**

**225.18(d)(3)** Is or has been a managerial employee of an occupational licensee licensed by the department that has been suspended or revoked.

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COMMENTS:

- [CVR-Unsigned, dated June 2002]

Office managers and business managers of automobile and truck dealerships (second-line business partners) regularly change jobs in the new car franchise dealership industry. If a dealership loses its occupational license by no fault of the Office or Business Manager, the broad scope of this regulation would prevent them from participation in this program at another dealership. This paragraph should be more specific or deleted.

**Department's Response:** Managerial employees have a responsibility for the integrity of a business. Working for a questionable employer casts a shadow of suspicion on the character of employees that have intimate knowledge of a business' operations and values. The department will fully investigate and take into account the circumstances of each situation utilizing the guidelines contained in Section 225.12 of these regulations. Vehicle Code section 1685 (b)(2)(B) mandates the department to focus on character, honesty, integrity and reputation, as the department may consider necessary.

### **Section 225.36 Change of First-Line Service Provider.**

**225.36(a)** If a second-line business partner requests to change the first-line service provider identified in the BPA contract, the second-line business partner shall complete and submit to the BPA Program Administrator a request for a change in the BPA contract on the Business Partner Automation Program Service provider Change form, REG 4022 (Rev. 11/2002), which is hereby incorporated by reference. The request shall be completed, signed and submitted to the BPA Program Administrator no less than twenty (20) days prior to any change of service provider

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COMMENTS:

- [William T. Rountree III, GSS, Inc and TriVIN, Inc., June 28, 2002]

The expense required to participate in the program will make it unattractive to potential Second Line Business Partners. [Mr Rountree referred to the fee for a change of service provider contained in the emergency regulation approved July 5, 2002.]

**Department's Response:** The department has reviewed and revised the BPA fee structure. There is no longer a fee to change service providers.

### **Section 225.39. Responsibilities of First-Line Service Provider (FLSP).**

**225.39(a)(1)** First-line service providers shall be responsible for providing oversight for their second-line business partners to ensure they are in compliance with the terms and conditions of their BPA contracts.

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COMMENTS:

- [CVR-Unsigned, dated June 2002]

Requirements are all encompassing and do not define parameters that the First Line Service Provider (FLSP) is responsible for. They (the requirements) will require additional unplanned resources and expense to implement. CVR's current business model will not support this cost burden, and consequently, CVR will be forced to withdraw from participation in the BPA program. CVR requests that (1) *[these regulations]* be removed from the regulations. *[CVR referred to the emergency regulations approved July 5, 2002 which required FLSPs to pay for audits of SLBPs under specified conditions.]*

**Department Response:** *The regulations have evolved since this letter was written. Modifications to the regulations have provided clearer rules to inform the business partners of their responsibilities. The FLSP is only responsible for the job functions discussed in 225.39 and their own contracts with the SLBPs. As trainers for their SLBPs and with the electronic interface functions that they provide between DMV and the SLBPs, the FLSP would be in a position to spot problems and handle them immediately. As the recruiters for the SLBPs, the FLSP would and should be determining the honesty and integrity of potential business partners. As recruiters and trainers for SLBPs, the FLSPs have an obligation to inform the SLBPs of the department's requirements and the Vehicle Code sections governing their business operations.*

- [William T. Rountree III, GSS, Inc and TriVIN, Inc., June 28, 2002]

The requirement that first-line business partners, in certain instances, shoulder expenses associated with DMV-conducted audits of second-line business partners (including the salaries of state employees) is unacceptable. The BPA program is already saving the state a significant amount of money by allowing registrations to be processed in a more cost effective manner by second-line business partners. To ask the first-line business partners to shoulder the expenses associated with administering a money-saving program borders on the ridiculous and flies in the face of the spirit in which any public-private partnership is built.

**Department Response:** *The department reviewed its policy and modified the language, but the policy remains. This position was not taken lightly. It is the responsibility of the business partners to process the department's work correctly. This is what an audit will tell the business partner and the department. Therefore, the business partner should pay for the audit. It is not up to the state taxpayers to pay for verification that a business partner is processing the department's transactions correctly.*

225.39(a)(14) Ensuring that all of their second-line business partners comply with the advertising requirements identified in any agreement with the department.

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COMMENTS:

- [CVR-Unsigned, dated June 2002]

Requirements from this subsection are an oversight and enforcement requirement that will place an additional cost and resource burden on the FLSP. With the anticipated number of participants (600 to 3,000 SLBP's), it would be impossible for a FLSP to have enough field personnel to guaranty compliance.

**Department's Response:** *See responses in Section 225.39 above.*

**225.39(c)** When the second-line business partner fails to pay the department for the examination, audit or investigation within the thirty (30) days as required in Section 225.39(b) of these regulations, the first-line business partner that provides the interface access to the department for the second-line business partner shall be billed by the department and have thirty (30) days from the billing date to pay for the examination, audit or investigation.

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COMMENTS:

- [CVR-Unsigned, dated June 2002]

Based on review of the BPA regulations, there appears to be no defined criteria to determine if the FLSP is responsible for any SLBP non-compliance. This lack of definition exposes the FLSP to additional unplanned costs. Additional cost required to manage this risk will place an unreasonable burden on the FLSP. CVR requests that this requirement be withdrawn. [CVR referred to the emergency regulations approved July 5, 2002.]

**Department's Response:** The language –failed to demonstrate adequate oversight” was deleted.

- [Dan Cinnamon, GSS, July 29, 2002]

“Adequate oversight” is not defined in the emergency regulations. The FLSPs must know what they must do in order to satisfy their responsibilities to the State. We submit that an acceptable definition of “adequate oversight” is that the FLSP will provide the DMV auditors specified records demonstrating its oversight of the SLBP, including each transaction processed.

**Department's Response:** The language –failed to demonstrate adequate oversight” was deleted. Section 225.39 of these regulations specifically lists the areas in which a business partner is to assume responsibility regarding BPA transactions.

**225.39(c)** When the second-line business partner fails to pay the department for the examination, audit or investigation within the thirty (30) days as required in Section 225.39(b) of these regulations, the first-line business partner that provides the interface access to the department for the second-line business partner shall be billed by the department and have thirty (30) days from the billing date to pay for the examination, audit or investigation.

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COMMENTS:

- [Dan Cinnamon, GSS, October 29, 2002]

This subsection places the liability for delinquent payment for a department audit of a Second-Line Business Partner (SLBP) on the Service Provider (FLSP). The burden of liability for the cost of an audit of a SLBP is inherently the SLBP's. The SLBP's surety bond covers delinquent financial liability to the state and the department. GSS requests that this subsection be removed from the emergency regulations and that the state invoke the bond if payment is not forthcoming.

**Department's Response:** The bond is not conditioned to pay when a business partner is delinquent for reimbursement of an audit, investigation or examination. The direct and constant relationship between the first-line service provider and the second-line business partner should prevent the necessity of this audit. As all payment for the department's transactions are paid by the first-line service provider and not the second-line business partner and the inventory is provided through the first-line service provider, the first-line service provider should be aware when circumstances arise that would prompt the need for an audit, examination or investigation.

## **Section 225.42 Business Partner Changes.**

**225.42 (a)** A business partner shall notify the BPA Program Administrator within the timeframes identified for the changes listed in Sections 225.42(a)(1) through (7) of these regulations on a Business Partner Automation Program Application for Changes form, REG 4026 (Rev. 11/2002), which is hereby incorporated by reference. The completed and signed Business Partner Automation Program Application for Changes form shall be sent by US Mail or private courier to the Department of Motor Vehicles, BPA Program Administrator, 2415 1<sup>st</sup> Avenue, MS D166, Sacramento, CA 95818. The following changes shall be entered on the Business Partner Automation Program Application for Changes form:

(1) Closing a site, identified by the site identification number. The business partner shall notify the BPA Program Administrator no more than five (5) days after the closure of the site.

(2) Changing the business, corporate, or Limited Liability Company name. The business partner shall notify the BPA Program Administrator no more than twenty (20) days after the effective date of the name change.

(3) Adding a site. A nonrefundable processing fee of one hundred and seventy-five dollars (\$175) shall be submitted to the BPA Program Administrator with the Business Partner Automation Program Application for Changes form when a business partner adds a site after entering into a BPA contract.

(4) Changing the address of a principal place of business or site. The business partner shall notify the BPA Program Administrator no less than twenty (20) days prior to the address change.

(5) Adding an employee. A business partner shall not permit an employee to access DMV inventory or data unless the business partner has complied with the requirements of Section 225.03(d) of these regulations and has received approval from the department under Section 225.18(c) for the employee to have access to DMV inventory and data.

(6) Deleting an employee. The business partner shall notify the BPA Program Administrator no more than five (5) days after deleting an employee from the BPA program. The business partner shall identify the reason for deleting an employee.

#### COMMENTS:

- [CVR-Unsigned, dated June 2002]

Every transaction processed by the BPA program is one less the DMV has to process manually. DMV cost savings that will be realized as a result of the BPA program will allow the allocation of DMV resources to other critical tasks, and these cost saving appear not to have been factored into the fees levied above. [Letter refers to costs in Sections 225.03, 225.36 and 225.42 of the emergency regulations approved July 5, 2002.] Further, these fees, in addition to costs for the annual audit, make participation in the BPA program economically prohibitive for a SLBP.

**Department's Response:** The department reviewed the BPA fee structure and modified the fees to incorporate cost to the department for processing changes into the initial application fees.

### Section 225.45 Customer Fees.

**225.45(a)** A business partner shall complete a Business Partner Automation Disclaimer form, REG 4020 (Rev. 11/2002) for each DMV transaction when a transaction fee is charged.

(1) The business partner shall obtain the customer's signature on the form after the business partner enters on the form the transaction fee amount that the business partner is charging to process the transaction.

(2) The business partner shall provide the completed original of the Business Partner Automation Disclaimer form to the customer, shall keep a completed copy, and shall send a copy to the department with the transaction documents. Voided copies of the form shall be retained with the completed copies kept by the business partner pursuant to Section 225.60 of these regulations.

#### COMMENTS:

- [Dan Cinnamon, GSS, February 24, 2003]

GSS proposes an exception to the above regulation for transactions processed by multiple fleet vehicles and rental car companies as the same legal owner. This exception shall provide for the use of one Business Partner Automation Disclaimer for, REG 4020 (Rev. 11/2002) or a substitute form that states and certifies the transaction rate and fee charged for all of the fleet vehicles of the same legal owner. The adoption of this exception will reduce the significant time and cost associated with its compliance while providing the DMV with the same information.

**Department's Response:** The department reviewed its policy regarding the REG 4020. Section 225.45(a) has been modified to allow business partners using a conditional sales contract or lease agreement to include the information on those documents in lieu of completing the REG 4020. In addition, when a first-line business partner is processing multiple fleet vehicles, the process may be modified to identify more than one vehicle on one form.

**225.45 (b)** The maximum amount a customer may be charged for each vehicle renewal transaction processed by a business partner is twenty-five dollars (\$25).

(c) The maximum amount a customer may be charged for each new vehicle report of sale transaction processed by a business partner is twenty-five dollars (\$25).

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COMMENTS:

- [Dan Cinnamon, GSS, July 29, 2002]

The fourteen-dollar (\$14) maximum a SLBP can charge its customer is not adequate to cover the additional costs of the emergency regulations, including the Business Partner Automation Disclaimer form. The maximum a SLBP can charge a consumer must be raised to twenty-four dollars (\$24) to cover all fees, costs, and requirements associated with processing a vehicle renewal transaction. *[Mr. Cinnamon referred to the emergency regulations approved July 5, 2002.]*

**Department's Response:** *The department reviewed the BPA customer fee schedule and modified the fees based on a survey sent to all participating BPA business partners.*

- [W. D. Kreutzen, Transportation Corridor Agencies, February 20, 2003]

Section 225.45 (b) and (c) permits a business partner to charge the customer up to \$27 for each new and used vehicle report of sale transaction that is process. Yet, the business partner must finger print each involved employee (Section 225.06(a)), maintain an automated inventory tracking system that will be audited (Section (225.39 (a)(4)), maintain a bond or an irrevocable letter of credit in the amount of \$650,000 (Section 225.09 2 (b)(1)), purchase thousands of dollars worth of computer equipment, (Section 225.27 (b) and Notice of Written Comment) and report on program employees who are terminated, (Section 225.42 (a)(6)).

**Department's Response:** *The department has reviewed its requirements for the BPA program, surveyed the second-line business partners concerning their current charges for the department's transactions and believes \$25 is a reasonable amount, even with the new requirements.*

- [W. D. Kreutzen, Transportation Corridor Agencies, February 20, 2003]

We believe that the maximum fee of \$27 should be raised to \$30 or more to prevent the business partner from losing revenue on the processing of each sale.

**Department's Response:** *See above response.*

## **Section 225.57      Inventory.**

**225.57**      [Reserved for future use.]

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COMMENTS:

- [CVR-Unsigned, dated June 2002]

Requirements of this subsection pose an economic burden on the FLSP (first-line service provider). Shipping costs for all recovered inventory will increase public sector expenses, and the increase in inventory shipping will waste California energy resources (trucking fuel) and DMV inventory (plates, stickers, and paper). The practice of allowing CVR to reallocate to viable SLBP's has worked well for years, and should be continued. *[CVR referred to the emergency regulations approved July 5, 2002.]*

**Department's Response:** *This section has been removed from the regulations. They will be reintroduced at a later date when additional research has been completed. The disposition of plates and stickers is a valid security and monetary issue for the department that must be addressed.*

- [Dan Cinnamon, GSS, July 29, 2002]

It is much more efficient to allow the FLSP to destroy damaged, expired, and/or accountable inventory, when necessary. GSS would like to suggest that the State's requirement to return damaged, expired, and/or obsolete accountable inventory to

the DMV to be an optional process available to FLSPs. *[Mr. Cinnamon referred to the emergency regulations approved July 5, 2002.]*

**Department's Response:** See above response.

## **Section 225.60 Retention of Business Records.**

**225.60 (a)** Each business partner shall maintain all business records related to the BPA program. These records shall be retained for the term of the BPA contract in which they pertain, for three (3) years following the termination, cancellation or expiration of the BPA contract and during any ongoing examination, audit and investigation pursuant to Sections 225.63 and 225.66 of these regulations.

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### **COMMENTS:**

- [John Cameron, CVR, email, Thursday, February 6, 2003]

Section 225.60 of these regulations requires business partners to maintain all business records related to the BPA program. It requires retention of these records for three years and they are subject to examination, audit and investigation. Since the customer contract includes the BPA fee as a separate line item it is subject to this requirement. Requiring Form REG 4020 is a duplication of this requirement.

**Department's Response:** The department has reviewed its position and agrees that the REG 4020 may be duplication, if a conditional sales contract or lease agreement is part of the paperwork. This is not always the case. Unless the business partner provides this information on a conditional sales contract or lease agreement, a REG 4020 must continue to be used, as it is the main auditing document that verifies the amount of the customer fee is within regulatory limits.

- [W. D. Kreutzen, Transportation Corridor Agencies, February 20, 2003]

Section 225.60 requires business partners to maintain all business records related to the BPA program. It requires retention of these records for three years and they are subject to examination, audit and investigation. Since the customer contract includes the BPA fee as a separate line item it is subject to this requirement.

Requiring Form REG 4020 is a duplication of this requirement and increases the level of complexity of the vehicle purchasing experience.

**Department's Response:** See above response.

## **Section 225.63. Audit Requirements.**

**225.63 (a)** A business partner shall hire an independent auditor to perform three (3) compliance audits during the term of the BPA contract. The audits shall be conducted by an independent auditor in accordance with generally accepted government auditing standards and the department's BPA Audit Plan, which consists of the Independent Audit Plan (August 30, 2002) and Independent Audit Program (August 30, 2002). The independent auditor shall keep confidential the department's business practices obtained in the course of an audit.

(1) The department may accept the Business Partner Automation Program Audit Self Certification form, REG. 4016 (NEW 8/2002), which is hereby incorporated by reference, in lieu of a compliance audit from second-line business partners only.

(A) The second-line business partner shall submit a Business Partner Automation Program Audit Self Certification form, REG 4016 (NEW 12/2002) to the BPA Program Administrator. A copy of the form shall be submitted to the first-line service provider and the Electronic Oversight Branch at the address indicated in Section 225.63(c).

(B) The Business Partner Automation Program Audit Self Certification form shall be submitted when an audit is due as set forth in Section 225.63(a)(2) of these regulations.

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### **COMMENTS:**

- [CVR-Unsigned, dated June 2002]

The scope and frequency of this audit requirement will economically prohibit SLBP participation in the BPA program. The estimated cost of these audits could exceed

\$10,000 annually. Accordingly, CVR estimates that this requirement will so severely limit the pool of prospective customers that continued participation in the program will be unprofitable for a FLSP. CVR will be forced to withdraw from participation in the BPA program. CVR requests time to research the true cost of such audits so that we can make a fully informed decision as to the effect of this provision. *[CVR referred to the emergency regulations approved July 5, 2002.]*

**Department's Response:** Section 225.63 was modified to allow SLBPs to self certify with random sample audits to verify compliance.

- [William T. Rountree III, GSS, Inc. and TriVIN, Inc., June 28, 2002]

The requirement for an annual audit by an outside party of each business partner will add additional expense and create an unnecessary diversion of scarce resources within the businesses of potential SLBPs. It also appears from the proposed audit guide that the audit is exhaustive, including the examination of parts of the Second Line Business Partner's business that are not directly related to their participation in the BPA program. According to the proposed regulations these audits are to be conducted by Certified Public Accountants that are unaffiliated with the SLBP. GSS estimates the professional service fees associated with each such audit to be on the order of \$5,000 to \$10,000—far beyond the reach of many SLBPs. *[Mr Rountree referred to the emergency regulations approved July 5, 2002.]*

**Department's Response:** See above response.

- [Dan Cinnamon, GSS, July 29, 2002]

The requirement that each SLBP obtain an annual audit by an independent auditor is an unjustified additional expense, and arguably, will not provide the DMV with any more assurance of compliance than do their existing procedures. It also appears from the proposed audit guideline that the scope of the audit goes beyond what a reasonable program would normally require. GSS estimates that each SLBP will incur additional annual audit fees of between \$5,000 and \$50,00 – an unmanageable cost for many SLBPs. *[Mr. Cinnamon referred to the emergency regulations approved July 5, 2002.]*

The independent audit requirement is one of the bigger obstacles to achieving a viable compromise with the State on the regulations. An annual audit of the SLBP by a CPA is costly, labor intensive, redundant, and in light of current events, unreliable. It also would be an overwhelming administrative task on each FLSP to provide the auditor the necessary information, support, and follow-up for each of its SLBPs.

**Department's Response:** See above response.

- [William T. Rountree III, GSS, Inc and TriVIN, Inc., June 28, 2002]

The requirement that First Line Business Partners, in certain instances, shoulder expenses associated with DMV-conducted audits of Second Line Business Partners (including the salaries of state employees) is unacceptable. The BPA program is already saving the state a significant amount of money by allowing registrations to be processed in a more cost effective manner by Second Line Business Partners. To ask the First Line Business Partners to shoulder the expenses associated with administering a money-saving program borders on the ridiculous and flies in the face of the spirit in which any public-private partnership is built.

**Department's Response:** See above response.

**225.63 (d)** A business partner shall inform the BPA Program Administrator when an independent auditor is no longer employed by the business partner to perform an audit. This notice shall be sent within seven (7)

days of release of the independent auditor. The signed and written notice on business partner letterhead shall be sent by facsimile, US mail, or private courier when an independent auditor is released from service.

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COMMENTS:

- [Dan Cinnamon, GSS, October 29, 2002]

This subsection requires that the FLSP (first-line service provider) notify the department when the independent auditor is released from service. The intent of this subsection is unclear. There is no regulation to notify the department when the auditor is selected. The notification to the department adds no value in the security or integrity of the annual audit. The requirement is that they are conducted by a Certified Public Accountant. In the event an auditor is dismissed from service, notification to the department is an unnecessary obligation. GSS requests that the above subsection be removed from the [emergency] regulations.

**Department's Response:** *The requirement is for the protection of the business partner. The department will not release information to an auditor until it has received permission from the business partner. Without this subsection, an unscrupulous auditor who has been released by a business partner would still be able receive information from the department related to that business partner. The department would be unaware of the change in status and unknowingly release information that may be detrimental to the business partner and the department. The department must be vigilant in restricting information only to those authorized to receive and obligated to abide by the department's rules and regulations.*

## **Section 225.66. Investigation and Review.**

**225.66 (b)** The State may examine, audit, or investigate a business partner's activities under Vehicle Code section 1685, these regulations, and any agreement between a business partner and the State even if the BPA contract is terminated, cancelled or expires. The examination, audit or investigation may relate to any matter, including but not limited to procedures, operations and finances relating to the business partner activity. The business partner shall make available to the State all of its records and reports relating to the conduct of the activity, whether hard copy, or stored in electronic media. Failure by a business partner to comply with the provisions of this section shall be cause for immediate termination of a business partner's rights to process transactions as a business partner.

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COMMENTS:

- [Dan Cinnamon, GSS, October 29, 2002]

This subsection states that the state may examine, audit or investigate a business partner's activities under Vehicle Code § 1685. It also states that the examination, audit or investigation may relate to any matter. GSS feels that this language is much too broad and requests that the regulation be BPA specific.

**Department's Response:** *This subsection only relates to the BPA program. Paragraph (a) discusses the department's rights to use all powers "to administer and enforce this article" referring to BPA regulations. The subsection is BPA specific.*

**225.66 (c) (1) through (3)** Whenever the department examines, audits or investigates any business partner, that business partner shall pay, within thirty (30) days after receipt of a statement from the department, the reasonable costs incurred by the department for the performance of the examination, audit or investigation, including, but not limited to: (1) ...reasonable salary...paid to the persons making the...audit...(2) ...reasonable expenses for travel, meals and lodging...(3) ...other expenses, including overhead.

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COMMENTS:

- [CVR-Unsigned, dated June 2002]

This subsection's requirements expose all business partners to additional unplanned costs. These costs have not been included in any business model and the additional burden will economically prohibit FLSP and SLBP participation in the BPA program.

CVR believes the current BPA program standards (E.3. of the Service Provider Agreement and D.1 of the Second Line Business Partner Agreement) are adequate.

**Department's Response:** *The examination, audit, or investigation is in place to authorize a complete review by the department or another state agency. This review is beyond a routine compliance audit. This section is to allow the review of the BPA operations should the department or other state agency, including various law enforcement entities, become informed or aware of discrepancies or unauthorized operation of the BPA program function(s).*

- [Dan Cinnamon, GSS, July 29, 2002]

This is a clear example of the State passing on its audit expenses to its BPA Business Partners. GSS does not believe that it is appropriate under any circumstances for it to pay the salaries of state employees to conduct audits of state programs.

**Department's Response:** *The department must protect taxpayers from harm brought about because of misconduct or mistakes made by a business partner. It is the responsibility of the business partners to process the department's work correctly. This is what an audit will tell the business partner and the department. Therefore, the business partner should pay for the audit. It is not up to the state taxpayers to pay for verification that a business partner is processing the department's transactions correctly.*

- [Dan Cinnamon, GSS, October 28, 2002]

This subsection states the business partner shall pay, within ten (10) days after receipt of a statement from the department, the reasonable costs incurred by the department for the performance of an audit. GSS requests that the language of this section give thirty (30) days for a business partner to pay these costs. Granting thirty (30) days for payment would be consistent with the thirty (30) days stated in section §225.39 (b) Business Partner Responsibilities. [Mr. Cinnamon referred to the emergency regulations approved November 4, 2002.]

**Department's Response:** *The department has reviewed its policy and has changed the time frame to thirty (30) days.*

## DOCUMENTS:

### IT Security Guidelines

(5) Maintenance of an information technology security program

(c) Exclusion of persons not authorized to have access to the DMV information assets from portions of the worksites where workstations, servers and information are located, and where information may be viewed.

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- [CVR-Unsigned, dated June 2002]

This subsection's requirements are so restrictive that an automobile or truck dealership's (SLBP) customers or personnel would be restricted from the Finance & Insurance office while the registration process is taking place. This restriction would compromise the SLBP's business model for participation and would render the BPA program undesirable for the SLBP.

**Department's Response:** *The department has always worked with business partners to resolve security requirements. Yes, it is true that certain workstation configurations would preclude customers or personnel from viewing the screen or being within reach of inventory, but these restrictions are in place for security purposes. A simple wall panel or barrier, along with use of a computer credential authentication program may resolve the situation. Problems based on physical space limitations have been and can be resolved to the benefit of both the department and the business partner.*

- [William T. Rountree III, GSS, Inc and TriVIN, Inc., June 28, 2002]

The requirement that the Second Line Business Partner sequester the BPA workstation in a location that is inaccessible to other employees who are not authorized to access the workstation is unworkable. Many of the business places of program participants are not of sufficient size to allow compliance with this requirement. In our opinion, no participant will undertake costly facilities improvements simply so that they can participate in the BPA program.

**Department's Response:** See above response.

- [Dan Cinnamon, GSS, July 29, 2002]

A requirement within the *IT Security Guidelines* could be interpreted to prohibit the registered owner of a vehicle from being present while the transaction is being processed for that owner's vehicle. This constraint is unduly restrictive. The current security and protection of confidential information guidelines addresses this issue. Additional regulations are not needed.

**Department's Response:** The guidelines do not prohibit customers from being present while transactions are processed. See above response.

### **Independent Audit Plan and Program**

- [Dan Cinnamon, GSS, July 29, 2002]

The following is a review of the requirements set forth by the *Department of Motor Vehicles, Electronic Oversight Branch, Business Partner Automation Program Independent Audit Program*:

1. Regarding inventory accountability, currently an Override Log does not exist and would require additional cost, technical resources and time to implement.

2. Access Authorization. The following are GSS built-in system specifications.

The State was provided a complete set of system specifications when GSS was approved as a vendor. If anything, a simple confirmation of the system "working as designed and approved" should meet the needs of the DMV. An annual review is unnecessary.

a. The User Access Report and Transaction Detail Report to determine if the log-on attempts to the DMV system are electronically monitored and logged.

b. The User Access Report and Transaction Detail Report to insure authorized users are only using the system during authorized days of the week and hours of the day as stated in the contract. The GSS system does not allow access at unauthorized times.

c. The Password Change report to determine if passwords are changed as required. The GSS system automatically forces the user to change his or her password every 60 days as required in the original contract. The *Business Partner Automation Program Independent Audit Program* states that the password be changed every 35 days. This again will require additional costs, time and technical resources to implement.

3. Security. All security measures are pre-approved by the DMV's IPS Section to ensure the total security of DMV assets including confidential DMV records. No SLBP should be required to provide costly facility improvements, beyond the current requirements, simply to continue participation in the BPA Program.

4. Vehicle Processing Controls. These requirements create an enormous amount of paperwork when compiled for each transaction and require additional training and administrative costs for both the FLSPs and the SLBPs.

5. Service Provider Requirements. The GSS BPA system configuration and network architecture has already been reviewed and approved. An annual review of these systems would add unneeded costs and be redundant.

***Department's Response:*** The document itself states that alternative systems that accomplish the same goal will be acceptable to the department.

- [Alana L. Connick, GSS, August 14, 2002]

Section III D states that copies of the audit will be sent to both the Registration Operations Division and the Audits Office Electronic Oversight Branch. Could the department provide specific mail information for each?

***Department's Response:*** The addresses for both the BPA Program Administrator (225.03(b)) and the Electronic Oversight Branch (225.63(c)) are provided in the text of the regulations.

- [Alana L. Connick, GSS, August 14, 2002]

Section III E states that the Electronic Oversight Branch will have the responsibility for receiving the audits. This appears to conflict with the instructions in Section D.

***Department's Response:*** In the Audit Plan, Section III E, entitled –Audit Follow Up”, the audit findings, recommendations and business partner response are to be received and reviewed by the Electronic Oversight Branch. Part D states that the audit findings, recommendations and business partner response are to be sent to the Program Administrator and the Electronic Oversight Branch. Although both are to receive a copy of the audit package, it is the Electronic Oversight Branch that has the responsibility to review audits.

- [Alana L. Connick, GSS, August 14, 2002]

Section III E also states that the CADMV reserves the right to perform an audit at any time for any reason. We would like to ask that this statement be BPA specific.

***Department's Response:*** Because it is impossible to foresee all situations and circumstances, the department reserves the right to review.

- [Alana L. Connick, GSS, August 14, 2002]

In the second document, Section G, the terms of the electronic fund transfer appear to only address the Service Provider. Are they not also applicable to a First Line Business Partner?

***Department's Response:*** The department has reviewed the Audit Program and revised it to include the first-line business partners.

## **FORMS:**

### **REG 4019 Statement of Personal History**

#### **COMMENTS:**

- [CVR-Unsigned, dated June 2002]

Disclosure of historical salaries and extremely personal employment information has no bearing on BPA program, nor does it improve security of DMV information.

Additionally the statement in paragraph 3 on the 1<sup>st</sup> page, reading, “This information is public record, regularly used by law enforcement agencies, and is open to inspection by the public”, violates the applicant’s privacy. These requirements intrude into a user’s personal life and will ultimately strongly discourage SLBP participation in the BPA program. The SLBP’s occupational license conditions cover these elements and the threat of punitive action against that license is sufficient safeguard against potential misuse of DMV information.

***Department's Response:*** Salary information has been deleted from the document. The form is public record but the information provided on the form is confidential and subject to the California Public Records Act of 1968 and the Information Practices Act of 1977.

- [William T. Rountree III, GSS, Inc. and TriVIN, Inc, June 28, 2002]

There are invasion of privacy concerns that are raised by the application materials that have been proposed. The proposed Personal History Form requires employees of the SLBP to divulge their current salary, their complete employment history (with salaries), and whether or not either their current or any prior employer has ever demoted them.

**Department's Response:** *The department has reviewed its form and policy requirements. The department has modified the form to delete the salary information. Regarding the privacy issue, the form formatting and the questions asked on the form are open to the public but the information provided on the form by each business partner participant is confidential and kept in locked cabinets. Disclosure is subject to the Information Practices Act of 1977 and the Public Records Act. The SLBP's occupational license only covers the licensee and not the vast majority of workers within the BPA program.*

- [Dan Cinnamon, GSS, July 29, 2002]

Due to invasion of privacy concerns for the participants in the BPA program, the requirement for a Personal History form, REG 4019 (NEW 2/2002) should be deleted.

**Department's Response:** *See above responses. Vehicle Code section 1685(b)(2)(B) mandates the department to focus on character, honesty, integrity and reputation. The department has interpreted this mandate to require all persons involved in the actual program to be free from prior known work-related crimes involving moral turpitude. The questions asked on the form are related to these factors and each participant's work habits and work history.*

- [Alana L. Connick, GSS, August 16, 2002]

Our concerns with the Personal History requirement are numerous. While we can respect the department's desire for quality participants in the program we feel that these requirements are onerous and have no bearing on the security or the integrity of the BPA program. We sense that the department may have taken a requirement from one of its other programs and attempted to make them "fit" the BPA program. *[Ms. Connick referred to the emergency regulations approved on July 5, 2002.]*

**Question 1.** The collection of the Social Security Number (SSN). The authority to collect this number is cited under Section 30 of the California Business and Professional Code. I presume that it is referring to the following language:

"Notwithstanding any other provision of law, any board, as defined in Section 22, and the State Bar and the Department of Real Estate shall at the time of **issuance or renewal of the license** require that any licensee provide its federal employer identification number if the licensee is a partnership or his or her social security number for all others."

This section is not applicable to the BPA program. The collection of the SSN is not relevant to the program.

**Department's Response:** *Question 1: The requirement of a social security number has been deleted.*

**Question 2.** Physical description is also not relative to the BPA program.

**Question 2.** There is no requirement that a BPA participant or principal hold a CA DL or ID card. Is it the department's intent to run the driving record of the participants/principal? Will those records then become a part of the public record?

**Department's Response:** *Question 2: A person's physical description and his/her California driver license or identification card number are necessary to identify an individual using the Department of Justice and Federal Bureau of Investigations computer databases. Without this*

information the department would be unable to determine a person's criminal history and, thus, their eligibility to participate in the BPA program.

**Question 3.** Employment History. Disclosures of personal job history and salary have no bearing on the BPA program. If the department is attempting to determine if they will receive monies due the suggestion is to require a financial statement from the companies responsible for the payment of these funds. If they are attempting to "qualify" a participant the issuing of licensing comes into play again. **Department's Response:** Question 3: Salary information has been deleted from the form but information related to prior work history is necessary to determine a person's honesty, integrity and character.

**Question 4a. & 4b.** This appears to be information that the department should have in its records. If the applicant replies "NO" would the department accept their response and not do any further investigation?

**Department's Response:** Question 4a and b: The department may investigate further if the answers to the questions are inconsistent.

**Question 5.** The premise normally adhered to is innocent until proven guilty. Again this also begs the issue of public records and privacy.

**Department's Response:** Question 5. The department is only looking at record convictions to determine if a person meets the statutory requirement of honesty, integrity and character.

**Question 6.** To reiterate the state is not licensing BPA program participants. We respectively suggest that it would seem to be each business partner's responsibility to ensure that they are hiring qualified applicants.

**Department's Response:** Question 6: The legislature authorized the department to regulate the BPA program, which includes participant to meet the statutory requirements imposed by the Legislature.

**Question 7.** This should be answered by the response to the fingerprint requirement.

**Department's Response:** Question 7: See response above to Question #2.

#### **REG 4020 Disclaimer**

- [William T. Rountree III, GSS, Inc and TriVIN, Inc., June 28, 2002]

The addition of a three-part business form that must be signed, and sworn, by every consumer whose registration is processed by a Second Line Business Partner, and then submitted by the SLBP to the DMV with the supporting paperwork, will discourage the participation of Second Line Business Partners. This form not only creates an additional cost for the state, it also adds complexity to the handling of the registration transaction by both the SLBP and FLBP. Many consumers will likely decline the service if they are required to sign a form that on its face asks them to swear to their understanding of the form's contents under the penalty of perjury.

**Department's Response:** This form is the main document used by the department's auditors to verify that the customer fees collected for the BPA program by a business partner are within the regulatory limit. The form also acts as a consumer protection document that informs the customer of the non-DMV fees charged to process the customer's transaction as opposed to the customer thinking all the money charged is for DMV fees. For many years, customers have been signing the department's various forms for registration, driver license and occupational licensing with the term "under penalty of perjury". There has not been a decline in service or reported hesitation in signing the forms.

- [John Cameron email, Thursday, February 6, 2003]

This form should be eliminated for the following reasons: full disclosure is already required on the conditional sale contract and lease agreement (CVC 2982, 2985.8). The customer already signs the contract acknowledging they have read the complete

document. Customers are given a copy of this contract and the business partner retains a file copy. If fraud is suspected this document can be made available for audit. Why generate another form containing the same information?

Adding Form REG 4020 to the current paperwork process increases the level of complexity to the vehicle purchasing experience and enhances the opportunity for error. VIN number mistakes, the additional signature requirement and the handling, forwarding and filing of additional paperwork can all contribute toward mistakes in audit accountability. Placing the information on the customer contract streamlines the process, simplifies the audit trail and reduces the opportunity for fraud.

Each second line business partner may have to dedicate time and effort in programming internal computer systems to handle this additional document. The top three computer suppliers to franchised auto dealers charge up to \$150 per form addition and/or form change. The cost impact for the franchised dealer industry alone could be as much as 1625 dealers paying \$150 for each change

**Department's Response:** *This form is required for various business partners. The department has reviewed its use and function. An exemption has been added to the regulations to allow the business partners to use the conditional sales contract or lease agreement in place of the form.*

- [Rick Carino, Franks Motors, email, February 21, 2003]

Section 225.60 requires business partners to maintain records related to the BPA program. Since the customer contract includes the BPA fee as a separate line item it is subject to this requirement. Requiring Form REG 4020 is a duplication of this requirement and increases the level of complexity of the vehicle purchasing experience, also increasing the possibility of error for the dealer due to unnecessary paperwork.

**Department's Response:** *See above response.*

#### **REG 4023, REG 4024, REG 4026**

- [William T. Rountree III, GSS, Inc and TriVIN, Inc., June 28, 2002]

In reviewing the documents we also noted two flagrant errors. In the three Application forms (Reg 4023 and Reg 4024), section I in each form refers to "Second Line Business Partners". This would be correct for the one form but not for the forms for the Service Provider nor the First Line Business Partner. The Application For Changes form (Reg 4026) states several fees for a variety of processes. Some of the fees shown on the form do not agree with the dollar amounts given in the regulations document, Section 225.42.

**Department's Response:** *The department reviewed its forms and revised them. Most of the dollar amounts in Section 225.42 of these regulations have been deleted.*

- [Dan Cinnamon, GSS, July 29, 2002]

The following fees required in REG 4026 (NEW 1/2002) are not consistent with the emergency regulations and the necessity for and/or the amount of any new fees should be reevaluated.

**Department's Response:** *The department reviewed its forms and revised them. Most of the dollar amounts in Section 225.42 of these regulations have been deleted.*

#### **"Documents in General"**

- [W. D. Kreutzen, Transportation Corridor Agencies, February 20, 2003]

Each BPA second line business partner may have to dedicate time and effort in programming internal computer systems to handle the additional documents. The top three computer suppliers to franchised auto dealers charge up to \$150 per form addition and or form change. The cost impact for the franchised dealer industry alone could affect over 1,600 dealers paying \$150 for each change. This would increase the industry wide cost of administering this program by up to \$162,500 per form change. This is an unnecessary additional expense to the business partner community.

**Department's Response:** *The department reviewed its forms and in some cases has revised them or allowed exemptions. As part of that process, the other forms were deemed necessary to successfully monitor and audit the program.*

- [Rick Carino, Frank Motors, email, February 21, 2003]

Each second line business partner may have to dedicate time and effort in programming internal computer systems to handle the additional documents. The top three computer suppliers to franchised auto dealers charge up to \$150 per form addition and or form change. The cost impact for the franchised dealer industry alone could affect over 1,600 dealers paying \$150 for each change. This would increase the industry wide cost of administering this program by up to \$240,000 per form change. This is an unnecessary additional expense to the business partner community.

**Department's Response:** *See above response.*

#### **4) Determination of Alternatives**

No alternative considered by the department would be more effective in carrying out the purpose for which these regulations are proposed or would be as effective and less burdensome to affected private persons than the adopted regulations. The department made an effort during the development of the emergency and permanent regulations to lessen adverse economic impact wherever possible, as demonstrated in the summary and response to comments. During the rulemaking process no reasonable alternative that would lessen the adverse economic impact on small business was submitted.